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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/755,810	01/12/2004	Michael L. LaJoie	61575-1035	2981
7590		12/31/2007		
Alex L. Yip Kaye Scholer LLP 425 Park Avenue New York, NY 10022			EXAMINER ZHONG, JUN FEI	
			ART UNIT 2623	PAPER NUMBER
			MAIL DATE 12/31/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/755,810

Applicant(s)

LAJOIE ET AL.

Examiner

Jun Fei Zhong

Art Unit

2623

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 and 29-37 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-9 and 29-37 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 July 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____.

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-9 and 29-37, drawn to system monitoring, classified in class 725, subclass 9.
 - II. Claims 10-20, 21-28, 38-48, and 49-56 drawn to access control, classified in class 725, subclass 25.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because system monitoring is not necessary for access control. The subcombination has separate utility such as blocking user access.

The examiner has required restriction between combination and subcombination inventions. Where applicant elects a subcombination, and claims thereto are subsequently found allowable, any claim(s) depending from or otherwise requiring all the limitations of the allowable subcombination will be examined for patentability in accordance with 37 CFR 1.104. See MPEP § 821.04(a). Applicant is advised that if

any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application.

3. During a telephone conversation with Brandon Sklar on 12/11/2007 a provisional election was made without traverse to prosecute the invention of I, claims 1-9 and 29-37. Affirmation of this election must be made by applicant in replying to this Office action. Claims 10-20, 21-28, 38-48, and 49-56 withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Note

4. Claims 1-9 and 29-37 are pending. Claims 10-20, 21-28, 38-48, and 49-56 withdrawn from further consideration.

Information Disclosure Statement

5. The information disclosure statement (IDS) submitted on 1/12/2004. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

7. Claims 1-5, 9, 29-33, and 37 are rejected under 35 U.S.C. 102(a) as being anticipated by McElhatten et al. (Patent # US 7073189).

As to claim 1, McElhatten discloses a system for detecting a removal of a device from a connection (e.g., device is off) thereof to a communications network, the system comprising:

an interface for receiving, from the device, signals through the communications network (e.g., processor 119 receiving heartbeat signal through network 140; Fig. 1), the signals indicating continuity of the connection, each of the signals containing information identifying the device (e.g., terminal 158-1 sends a heartbeat to headend, and the heartbeat contains MAC address of terminal 158-1) (see col. 10, lines 30-42);

a server responsive to receipt of a first one of the signals for determining whether a second one of the signals is received within a period from the receipt of the first signal, an alert being generated if it is determined that the second signal is not received within the period (e.g., when processor 119 no longer receives heartbeat, processor 119 halted the transmission) (see col. 10, lines 30-42).

As to claim 2, McElhatten discloses the system according to claim 1, wherein the communications network includes a two-way multichannel delivery network (e.g., M transmission channels) (see col. 9, lines 30-49).

As to claim 3, McElhatten discloses the system according to claim 2, wherein the delivery network includes a cable TV network (see col. 1, lines 12-15).

As to claim 4, McElhatten discloses the system according to claim 3, wherein the cable TV network includes a hybrid fiber coaxial (HFC) cable network (see col. 5, lines 29-34).

As to claim 5, McElhatten discloses the system according to claim 3, wherein the device receives programming content from the communications network (e.g., terminal 158-1 receives program stream from headend) (see col. 10, lines 10-29).

As to claim 9, McElhatten discloses the system according to claim 1, wherein the information includes a serial number pre-assigned to the device (e.g., MAC address of terminal 158-1) (see col. 10, lines 32-35).

As to claims 29-33 and 37, they contain the limitations of claims 1-5 and 9 and are analyzed as previously discussed with respect to claims 1-5 and 9 above.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 6-8 and 34-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over McElhatten et al. (Patent # US 7073189) in view of Lu (Pub # US 2002/0157115).

As to claim 6, note the discussion above, McElhatten discloses a cable TV network system.

McElhatten fails to disclose a point-of-deployment (POD) module in set top terminal.

Lu discloses a host device having an interface for coupling with a point-of-deployment (POD) module for providing conditional access to selected programming content (see paragraph 0026; Fig. 1).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide POD module as taught by Lu to the set top terminal of McElhatten in order for electronic apparatuses that may be inserted into or attached to a standard consumer electronic system to thereby enable the standard consumer electronic system to perform enhanced, non-standard applications (see paragraph 0005).

As to claim 7, Lu discloses the system according to claim 6, wherein the selected programming content is selected by the system (e.g., services provider authorized program access right for user) (see paragraph 0027).

As to claim 8, McElhatten discloses the system according to claim 6, wherein the selected programming content includes video-on-demand (VOD) content (see col. 13, lines 6-28).

As to claims 34-36, they contain the limitations of claims 6-8 and are analyzed as previously discussed with respect to claims 6-8 above.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Donlan et al. (Pub # US 2004/0088734 A1) is cited to teach monitoring iTV network.

Hendricks et al. (Patent # US 7134131) is cited to teach digital broadcasting billing system.

Inquiries

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jun Fei Zhong whose telephone number is 571-270-1708. The examiner can normally be reached on Mon-Fri, 7:30-5:00 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vivek Srivastava can be reached on 571-272-7304. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JFZ
12/17/07



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